

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

Docket No.

74-1173

IN THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SECOND CIRCUIT

DELPHINE E. PLOURDE,
Plaintiff-Appellee

VS.

SHERBURNE CORPORATION,
Defendant-Appellant

Appeal from the United States District Court
for the District of Vermont
Honorable James S. Holden, Chief U.S.D.J.

REPLY BRIEF OF DEFENDANT-APPELLANT



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I. A MOTION FOR DIRECTED VERDICT OR A MOTION TO SET
ASIDE A VERDICT AND JUDGMENT ON THE GROUNDS THAT
THERE IS "NO EVIDENCE" RAISES A QUESTION OF LAW
FOR REVIEW.

The Plaintiff on Page 7 of her Brief states "Defendant's
Motion to set aside the verdict * * * * * was addressed to
the sound discretion of the Trial Court". Dindo vs. Denton,
130 Vt. 98, 110, 287 A.2d 546, 553 (1972).

The full quotation from Dindo, supra, is as follows:

"Defendant's Motion to set aside or,
in the alternative, to order a remittitur
was addressed to the discretion of the Trial
Court. Banker vs. Dodge & Hemmings, 126 Vt.
534, 537, 237 A.2d 121 (1967).

In Banker vs. Dodge & Hemmings, 126 Vt. 534, 537, 237 A.2d
121, 124 (1967) and in Dindo, supra, the Court was referring
to Motions attacking the amount of the damages awarded. In
the case at Bar, at the close of the Plaintiff's case, the
Defendant moved for a directed verdict on the ground that
there was "no evidence" of negligence on the part of the
Defendant as a part of the proximate cause of the accident. (Tr.213)

At the close of all the evidence the Defendant renewed its Motion for directed verdict and stated there was "no evidence" of negligence and the Plaintiff assumed the risk. (Tr. 316) In Defendant's Motion to set aside the judgment order and verdict the Defendant again stated there was "no evidence to support the verdict". (Doc. No. 21, App. 15)

In O'Brien vs. Dewey, 120 Vt. 340, 347, 143 A.2d 130, 134 (1958) the Court stated that a Defendant's Motion to set aside the verdict based on the grounds that there is no evidence to support the verdict presents a question of law which is subject to review.

CONCLUSION

The verdict and judgment should be set aside and judgment should be entered for the Defendant for failure to prove causation and assumption of the risk.

Respectfully submitted,

SHERBURNE CORPORATION

By

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Reply
Brief for Sherburne Corporation by mailing two copies
of the same, postage prepaid, to Bloomer & Bloomer, Esquires,
75 Merchants Row, Rutland, Vermont 05701.

June 10, 1977

Harold E. Rogers